SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

October Term, 2000

Arkansas Presbytery of the
Cumberland Presbyterian Church

Petitioner

v.

Gary D. Hudson and Palmetto
Cumberland Presbyterian Church

Respondents

On Petition for Writ of Certiorari
To the Supreme Court of Arkansas

Petition for Writ of Certiorari

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QUESTION PRESENTED FOR REVIEW

This Writ of Certiorari seeks review of a decision by the Arkansas Supreme Court involving a dispute over ownership of local church property resulting from a local congregation's disassociation from the national Cumberland Presbyterian Church. The state court purported to apply the "neutral principles of law" approach set forth by this court in *Jones v. Wolf,* 443 U.S. 595 (1979).

1. Did the Arkansas Supreme Court violate the First Amendment rights of Petitioner under the free exercise clause when it contravened an unambiguous and pre-existing provision of the Constitution of the Cumberland Presbyterian Church and awarded church property to the members of a constituent congregation?

PARTIES TO PROCEEDING

Arkansas Presbytery of the Cumberland Presbyterian Church and Rev. Michael Qualls, Moderator of the Arkansas Presbytery

Petitioners

v.

Gary D. Hudson, Palmetto Cumberland Presbyterian Church by and through its Elders Bobby Gene Jones, Carol Norris, Arvil Hudson, Glen Bond, Sr., Kenneth Norris, Kurt Richter, as Trustees for the Palmetto Cumberland Presbyterian Church

Respondents

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BASIS FOR JURISDICTION

The Order of the Arkansas Supreme Court for which review is sought was entered March 29, 2001. The basis of jurisdiction for the United States Supreme Court is 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. Const. Amend. I

STATEMENT OF THE CASE

The Palmetto Cumberland Presbyterian Church in Pope County, Arkansas ("Palmetto") was formed in 1949 as a member of the parent Cumberland Presbyterian Church (CPC). The CPC is a hierarchical or connectional church. It operates pursuant to a national constitution and is governed on a national level by its general assembly, on a regional level by a body known as the Synod, and on a State level by a body known as the Presbytery. The Arkansas Presbytery governs all Cumberland Presbyterian Churches within the State of Arkansas.

Between 1949 and 1977, the Palmetto Church acquired three separate tracts of real estate in Pope County, Arkansas which it used for its Church, parsonage, and grave yard, respectively. All three tracts have been titled in the name of the "Trustees of the Palmetto Cumberland Presbyterian Church" since at least 1977.

Since 1920, the constitution of the CPC has provided that:

> the rightful ownership of church property belonging to a disorganized congregation is and should be in the Presbytery in whose bounds it is located. . . . In case the local congregation dissolves or ceases to exist, the property still belongs beneficially in trust to the [CPC].

See The Cumberland Presbyterian Digest of 1920. In 1984, the CPC amended its constitution to track the suggested language set out by the United States Supreme Court in *Jones v. Wolf,* 443 U.S. 595 (1979), so that, as the majority opinion in *Jones* states, the CPC could ensure

that "the hierarchical church will retain the church property." The 1984 amendment to the constitution states that:

> all property held by or for a particular church . . . whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in the programs of the particular church or of a more inclusive judicatory or retained for the production of income, and whether or not the deed to the property so states, is held nevertheless for the use and benefit of the Cumberland Presbyterian Church.

See The Cumberland Presbyterian Digest of 1992.

A representative of the Palmetto Church was present at the time the 1984 amendment was adopted and advised the remainder of the congregation of the amendment. The Palmetto Church remained a part of the Cumberland Presbyterian Church by paying regular dues, contributing money, etc. through at least 1991. On August 27, 1995, the Palmetto Church submitted a written notice indicating its desire to withdraw from the national church body. The CPC, acting through the Arkansas Presbytery, subsequently appointed a commission in accordance with the church constitution and recommended the dissolution of the Palmetto Church and the merger of any church members who wished to remain in the parent church with a nearby Mars Hill Cumberland Presbyterian Church.

The members of what was formerly known as the Palmetto Church refused to vacate the real property and to surrender the bank records,

church roll and other miscellaneous items of church property. The church members' refusal precipitated the instant action which commenced with the filing of a Complaint in Unlawful Detainer and for Replevin by the Arkansas Presbytery. The members of the Palmetto Church responded with a Counterclaim seeking to quiet title.

Petitioners initially raised the federal question at issue at the trial court level in its Response to Motion to Dismiss wherein Petitioners cited the *Jones v. Wolf* decision as authority for the position that the trial court was required to give effect to the 1984 CPC constitutional amendment creating an express trust over church property in favor of the CPC. No ruling was made on the Motion to Dismiss. Next, in the trial in the Chancery Court of Pope County, Arkansas, in its opening statement Petitioner's counsel made the following argument:

> And what we basically say is that the United States Supreme Court in *Jones v. Wolf,* and then there is a couple of state decisions thereafter following up on that, that say that if the church at large decides to make a change to its Constitution saying that all properties are held in trust for the church at large, we're not going to look at that. If they do that, we—they—we're going to stand by the church law, period; that's it. If they want to get into it with a—particular church and their Trustees, they are going to prevail. We're not going to say you can or can't do that, because how you handle your

church business and church law is
up to the church at large, period.

(Appeal Transcript, pages 389-90). The trial court found that the local church was governed by the CPC Constitution and that the constitution contained an express trust provision.

At the conclusion of the trial of the case, the trial court based its decision to award the property to the local congregants on the following findings: The applicable deeds listed the Trustees of the Palmetto Church as the title owners of the property, the funds used to build the improvements on the property came from the Palmetto Church congregation, the Palmetto congregation had exercised complete control over the property and the constitution of the CPC was amended to recite an express trust subsequent of the date of the pertinent conveyances.

Petitioners alleged in their first point on appeal that, "Under the neutral principles approach, as adopted by the U. S. Supreme Court, title to the church property at issue should be vested in the Cumberland Presbyterian Church. *Jones v. Wolf* [citation omitted]." The Arkansas Supreme Court considered and adopted the neutral principles doctrine but found in a 4-3 decision that there was no express trust provision in effect at the time the church property in question was acquired and that the express trust set out in the 1984 amendment to the church constitution could not, as a matter of law, create a trust over previously acquired property. The decision included a lengthy dissent pointing out that, under the U. S. Supreme Court's decision in *Jones v. Wolf,* the Arkansas court was "bound" to follow the CPC constitution to award the property to the hierarchical church.

REASONS FOR GRANTING THE WRIT

I. THE ARKANSAS SUPREME COURT MISAPPLIED THE NEUTRAL PRINCIPLES DOCTRINE BY FAILING TO DEFER TO THE CONSTITUTION OF PETITIONER AND, IN SO DOING, VIOLATED PETITIONER'S FIRST AMENDMENT RIGHT TO THE FREE EXERCISE OF RELIGION.

This Court has repeatedly held that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Presbyterian Church v. Hull Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed. 658 (1969). In *Watson v. Jones,* the original case addressing the issue of civil adjudication of church property disputes, this Court held that civil courts are required by the First Amendment to "defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), citing *Watson v. Jones,* 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1872). The holding in *Watson* recognized that individuals who organize religious associations impliedly consent to the government by those associations, and the intrusion of a civil court preventing or overturning an act of a governing ecclesiastical body denies the religious association its right to freely exercise its religious beliefs and practices. *Watson,* 80 U.S. at 729.

The issues of both church doctrine and polity are strictly off limits to civil courts and the fact that an issue concerns only polity and not doctrine does not lessen the stringent First Amendment protections which apply. In *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed. 151 (1976), this Court held that:

> The First Amendment . . . commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. **This principle applies with equal force to church disputes over church polity and administration.**

Serbian Orthodox, 426 U.S. at 710. (Emphasis added.)

This Court's decisions in *Maryland & Virginia Churches v. Sharpsburg Church,* 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed. 582 (1970), and *Jones v. Wolf, supra,* adopted the use of the neutral principles doctrine as a constitutionally valid method for the resolution of church property disputes. Pursuant to the neutral principles doctrine, a court may review controlling legal and religious documents, in purely secular terms, in order to resolve issues that do not involve church polity and doctrine, such as a determination of ownership of property. *Jones v. Wolf,* 443 U.S. at 604. However, no U. S. Supreme Court decision has ever allowed a civil court to contravene an unambiguous and pre-existing provision of a church charter or constitution in connection with the neutral principles doctrine or otherwise. In fact, in *Jones v. Wolf,* the Court specifically stated that:

> under the neutral principles approach, the outcome of a church property dispute is not foreordained. **At any time before the dispute erupts,** the parties can ensure if they so desire that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or. . . . Alternatively, **the constitution of the general church can**

> **be made to recite an express trust in favor of the denominational church.**

Jones, 443 U.S. at 605. (Emphasis added.) The clear meaning of the above-quoted language is that there is no need to engage in a neutral principles analysis once a church constitution has been duly amended with the result that the property issue has become a matter of church polity.

The inference that a church constitutional amendment can render a neutral principles analysis moot is restated later in the *Jones v. Wolf* opinion, where the Court states in regard to the separate issue of the defeasibility of a statutory presumption of majority rule, that:

> any rule of majority representation can always be overcome, under the neutral-principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way.

Jones v. Wolf, 443 U.S. at 607-608. Whether the issue is the defeasibility of majority rule, the resolution of a church property dispute, or otherwise, the *Jones v. Wolf* holding makes it clear that once a church constitution or charter is determined to have an applicable provision the neutral principles analysis is completed. From that point forward, the issue is rightly categorized as one of church polity and deference to the church is required by the First Amendment.

The exact result anticipated by the above-stated conclusion occurred in the predecessor to the *Jones v. Wolf* decision. The *Jones v. Wolf* decision was the third of a triumvirate of cases arising

out of the State of Georgia. In the first case, the Georgia Supreme Court adopted what has become known as the departure from doctrine approach pursuant to which a general church can be found to lose the property held by a local congregation if the general church substantially abandons the tenets of its faith. *Presbyterian Church v. Hull,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed 658 (1969). On appeal, the U. S. Supreme court reversed, finding that the departure from doctrine approach, impermissibly involved civil courts in matters of church doctrine and polity. *Id.*

The second case from Georgia was *Carnes v. Smith,* 236 Ga. 30, 222 S.E.2d 322, cert. den. 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976). There the Georgia Supreme Court applied the neutral principles approach, as discussed briefly in the U. S. Supreme Court's opinion in *Sharpsburg, supra,* to resolve a church property dispute. *Id.* The Georgia court examined the deeds, the corporate charter of the church and the state statutes and found no basis for a trust in favor of the hierarchical church. *Carnes,* 222 S.E.2d at 325-327. However, the court found that the constitution of the general church, in contrast to all of the other controlling documents, did contain an express trust provision in favor of the general church. *Id.* As a result, **even though the deeds were titled in the name of the Trustees of the local congregation, the Georgia Court held that the church property was held in trust for the parent church.** *Id.* at 329. Not only did this court allow the *Carnes* decision to stand, it cited it with approval in the subsequent holding in *Jones v. Wolf.*

In the present case, the Cumberland Presbyterian Church (CPC) amended its Constitution

in 1984 to create what the Arkansas Supreme Court found to be an express trust pursuant to which all church property, however titled, was held in trust for the parent church. The exact language is as follows:

> all property held by or for a particular church . . . and whether or not the deed to the property so states, is held in trust nevertheless for the use and benefit of the Cumberland Presbyterian Church.

The Arkansas Supreme Court further found that the CPC is a hierarchical church, that the constitution was duly adopted by the church's highest authority, that the Respondents (the "Palmetto Church") remained a part of the parent church for eleven years after the amendment and that the local church was aware of the amendment during the eleven-year period. In spite of these findings, the Arkansas Supreme Court contravened the applicable constitutional provision, holding that it was ineffective as to property acquired prior to the date of the constitutional amendment.

The holding of the Arkansas Supreme Court in this regard is directly contrary to this court's holding in *Jones v. Wolf,* where this court specifically stated in not one but two instances that the resolution of a church property dispute may be foreordained by an amendment to the church constitution "at any time prior to the dispute" which brings the matter before the civil court. *Jones v. Wolf,* 443 U.S. at 606. The clearly erroneous decision of the Arkansas court violates the neutral principles doctrine and the CPC's constitutional rights under the free exercise clause of the First Amendment.

II. ALLOWING THE IMPROPER APPLICATION OF THE NEUTRAL PRINCIPLES DOCTRINE BY THE ARKANSAS SUPREME COURT TO STAND WILL RESULT IN HIERARCHICAL CHURCHES BEING DETERMINED TO OWN PROPERTY IN ONE STATE AND TO NOT OWN PROPERTY IN ANOTHER STATE UNDER THE SAME CONSTITUTION.

On this issue, it is sufficient to say that a national church can only have one constitution and one charter but may operate in all fifty states. If the Arkansas decision is allowed to stand, the result will be that the CPC will have been declared the owner in trust of church property throughout Kentucky, Mississippi, Louisiana and Texas, while being deprived of its property in the State of Arkansas, although the facts and controlling documents are the same in each case. *See Cumberland Presbytery of the Synod of the Mid-West of the Cumberland Presbyterian Church v. Branstetter,* 824 S.W.2d 417 (Ky. 1992); *Bethany Independent Church v. Bethany Cumberland Presbyterian Church,* 465 So.2d 715 (La. Ct. App. 1995); *Shirley v. Christian Episcopal Methodist Church,* 748 So.2d 672 (Miss. 1999). This court went to considerable effort in *Jones v. Wolf, supra,* to create a safe harbor for hierarchical churches, and that safe harbor has been eliminated in Arkansas by the decision of the state Supreme Court in the present case.

III. THE ARKANSAS SUPREME COURT IS THE ONLY STATE COURT OF LAST RESORT OR FEDERAL COURT OF APPEAL TO FIND THAT AN EXPRESS TRUST PROVISION IN A HIERARCHICAL CHURCH CONSTITUTION IN EFFECT WHEN A PROPERTY DISPUTE AROSE MAY BE DISREGARDED UNDER THE NEUTRAL PRINCPLES DOCTRINE.

Two other state appellate courts have decided church property disputes within the Cumberland Presbyterian Church (CPC) and interpreted the exact CPC church constitution involved in the instant case. In *Cumberland Presbytery of the Synod of the Mid-West of the Cumberland Presbyterian Church v. Branstetter,* 824 S.W.2d 417 (Ky. 1992), the Kentucky Supreme Court held that the CPC constitution required that church property go to the parent church. The Kentucky court recognized that the CPC was a hierarchical church governed by its written constitution, its Confession of Faith, Rules of Discipline and a Directory for Worship. *See id.* at 418.

The property dispute in *Branstetter* was a result of a schism between two factions of a local church, and one issue before the court was which faction retained control of the property. *See id.* at 417. The Kentucky court acknowledged that the First Amendment prohibited it from determining which church faction remained loyal in its beliefs to the CPC, and so the court deferred to the decision of the parent church on that issue, applying the compulsory deference rule. *See id.* at 419.

The Kentucky court next considered the neutral principles approach of *Jones v. Wolf* and found that the CPC actions in amending the church constitution in 1984 complied with the directive of *Jones v. Wolf. See id.* at 421. The court

stated that by including the express trust provision, "the Cumberland Presbyterian denomination followed to a T the suggestion of the U. S. Supreme Court in *Wolf* as to a method of ensuring 'that the faction loyal to the hierarchical church will retain the church property.'" *See Branstetter,* 824 S.W.2d at 422. The property was awarded to the parent church and the local faction remaining loyal to the denomination. *See id.*

The express trust provision of the Cumberland Presbyterian Church constitution was also upheld by the Louisiana Court of Appeals in *Bethany Independent Church v. Bethany Cumberland Presbyterian Church,* 645 So.2d 715 (La. Ct. App. 1995). Another schism in a local congregation of the CPC was the impetus of the property dispute in *Bethany. See id.* at 716-17. The Louisiana court recognized that it was prohibited from deciding property disputes involving religious doctrine or practice, but the *Bethany* dispute did not involve religious doctrine, and so it could be handled as any other alienation of property by a nonprofit, unincorporated association. *See id.* at 720.

The default rule under Louisiana state law was to assume that the majority of an association ruled, but the presumption could be overcome by a written constitution or bylaws. *See id.* Because of the CPC constitution and other governing documents amplifying the hierarchical relationship between the CPC parent church and the individual CPC congregations, the court found that "churches purporting to be associated with the Cumberland Presbyterian Church clearly subject themselves to its rules and governmental structure and its doctrine." *See id.* at 720. The constitutional provision granting an express trust to the

denominational church was in effect years before the property dispute arose and it was undisputed that the local church was governed by the CPC constitution. *See id.* at 720-21. As such, the Louisiana court held that the state law presumption of majority control had been effectively rebutted by the church constitution, and the express trust found therein required that the church property be awarded to the parent church and that faction remaining loyal to the parent church. *See Bethany,* 645 So.2d. at 721-22.

Several property disputes have been adjudicated by state courts within other Presbyterian denominations.[1] In each case where the denomination was governed at the time of the property dispute by a constitution expressly providing that church property was held in trust for the hierarchical church, the state court enforced the trust and awarded the property to the parent church. The only instances where property was awarded to a local church in the face of a trust provision in the church constitution were cases where actions were taken to add the trust provisions to the constitution only after the property dispute arose.

The Supreme Court of Pennsylvania was faced with such a situation in *Presbytery of Beaver-Butler Church of the United Presbyterian Church in the United States of America v. Mid-*

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[1] It has been noted that, while their beliefs and church doctrines may not be congruent, the government of various Presbyterian church denominations is virtually identical. *See* Roland F. Chase, J.D., Annotation, *Determination of Property Rights Between Local Church and Parent Church Body: Modern View,* 52 A.L.R.3d 324, § 25, n. 19,20 (1974). Each Presbyterian denomination is governed at the highest level by a General Assembly, then at the regional level by a Synod, at a more local area by the Presbytery, and finally at the local congregational level by the Session, *See id.* n. 19.

dlesex Presbyterian Church, 489 A.2d 1317 (Pa. 1985). Applying neutral principles of law, the court found that at the time the property dispute arose, there was no clear and unambiguous language in the church constitution or elsewhere that created an express trust in favor of the hierarchical church. *See id.* at 268. It was a month after the local church voted to disaffiliate from the parent church that the church constitution was amended to include an express trust in favor of the parent church, thus the property was awarded to the local church. *See id.* at 267.

In *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America,* 464 N.E.2d 454 (N.Y. 1984), New York's highest court applied the neutral principles approach and awarded property to the local church because, at the time the property dispute arose, the church constitution did not contain an express trust provision. A similar result was reached by the Missouri state court of last resort in *Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465 (Mo. 1985). The Missouri court referenced other state courts' interpretations of the United Presbyterian Church in the United States of America ("UPCUSA") constitution and concurred with their conclusion that at the time each property dispute arose, the UPCUSA constitution did not contain an express trust in favor of the denomination. *See id.* at 474 (citing, *Foss v. Dykstra,* 342 N.W.2d 220 (S.D. 1983), and *First Presbyterian v. United Presbyterian,* 464 N.E.2d [N.Y. 1984])

In other cases where it was clear that the Presbyterian church constitution contained an express trust provision at the time the property dispute arose, each court adjudicating such a

dispute followed the parties' intent and enforced the provisions of the express trust. *See Babcock Memorial Presbyterian Church v. Presbytery of Baltimore of the United Presbyterian Church in the United States of America,* 464 A.2d 1008 (Md. 1983); *Korean United Presbyterian Church v. Presbytery of the Pacific,* 230 Cal. App. 480 (Cal. Ct. App. 1991); *Calvary Presbyterian Church v. Presbytery of Lake Huron of the United Presbyterian Church in the United States,* 384 N.W.2d 92 (Mich. Ct. App. 1986). In *Fonken v. Community Church of Kamrar,* 339 N.W.2d 810, 818-19 (Iowa 1983), the Iowa Supreme Court interpreted the UPCUSA constitution as imposing an implied trust in favor of the parent church and awarded the property to the parent church, noting that its decision was applicable under both the compulsory deference approach and the neutral principles approach.

The courts of last resort in several states have consistently upheld trusts in favor of the parent church of several other hierarchical church denominations as well when the intent of the parties was clearly that the local church would hold property in trust for the parent church. The subordinate relationship of the local church to the parent church and the history of dealings between the local church and parent Protestant Episcopal Church of the United States of America ("PECUSA") were sufficient to establish a trust relationship in cases decided by the courts of last resort in both Connecticut and Colorado. *See Rector, Wardens and Vestrymen of the Trinity-St. Michael's Parish, Inc. v. Episcopal Church in the Diocese of Connecticut,* 620 A.2d 1280 (Conn. 1993); *Bishop and Diocese of Colorado v. Mote,* 716 P.2d 85 (Colo. 1986). The supreme courts of both Delaware and Georgia have recognized that the

relationship between the United Methodist Church ("UMC") and its local congregations is one where local church property is held in trust for the parent church, and the church property was awarded to the parent church despite the absence of express trust language in the UMC constitution. *See East Lake Methodist Episcopal Church, Inc. v. Trustees of the Peninsula-Delaware Annual Conference of the United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1999); *Carnes v. Smith*, 222 S.E.2d 322 (Ga. 1976).

In *Shirley v. Christian Methodist Episcopal Church*, 748 So.2d 672 (Miss. 1999), the court of last resort in Mississippi enforced an express trust found in the constitution of the hierarchical Christian Methodist Episcopal Church ("CME"). The Mississippi Supreme Court had expressly adopted the neutral principles approach for resolving church property disputes in a prior decision. *See id.* at 675 *(citing, Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So.2d 200 (Miss. 1998)). Based on the factual findings below, the court noted that it was clear that the local church intended to operate as a part of the hierarchical CME church body. *See* 748 So.2d at 675. The local church was a connectional CME church and as such was governed by the Book of Discipline which contained express, unambiguous language stating that church property was held in trust in favor of the parent CME church. *See id.* at 676. The court held that it was bound to give effect to the express trust found in the church's Book of Discipline because it was evident that the local church was required to abide by the Book of Discipline pursuant to the parties' intent that that document govern their relationship. *See id.* at 677.

In those few instances where a court has awarded property to a local connectional congregation over the claim of its parent, hierarchical church, the constitution of the parent church lacked any clear "implied trust" language. Just a year before the Mississippi Supreme Court decided *Shirley, supra,* it awarded property to a local church in *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.,* 716 So.2d 200 (Miss. 1998). The contrast between the two cases is stark. Whereas in *Shirley* the church's Book of Discipline made it clear that the local church held its property in trust for the parent church, there was no evidence of an express trust between the parties in *Church of God Pentecostal. See id.* at 206. Under Mississippi law, the court would have granted the property to the parent church on an implied trust theory if there were "clear and convincing evidence evincing an intent on the part of the local congregation to create a 'trust' in favor of the denomination." *See id.* After examining the deeds to the property, the parent church by-laws and the conduct of the parties, the court concluded that the evidence fell far short of clear and convincing that a trust was intended. *See id.* at 208-09. In fact, there was evidence presented that the parent church did not even consider the local congregation to be a connectional church. *See id.* at 208. Based on the hierarchical church's failure to sufficiently prove that a trust relationship was intended by the parties, the court awarded the church property to the local congregation. *See id.* at 211.

The United States Third Circuit Court of Appeals in *Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church,* 98 F.3d 78

(3d Cir. 1996), awarded property to a local church based on New Jersey state corporate law. There, the hierarchical church incorporated an express trust provision into a Property Resolution which was purported to govern all church property; however, the local church's certificate of incorporation held that the local trustees controlled the church property. *See id.* at 81-3. New Jersey law required that when a corporation's certificate of incorporation conflicts with its by-law, the certificate of incorporation or charter prevails. *See id.* at 95. Thus, the express trust provision in the church's Property Resolution was trumped by the local church certificate of incorporation pursuant to New Jersey state corporations law. *See id.* at 96.

Another federal court of appeals opinion resolving a church property dispute in favor of a local church is *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522 (8th Cir. 1995). The situation in *Graham* is also markedly different from that in the case at bar. Whereas in the case *sub judice*, the CPC is undisputably a hierarchical church where local congregations are subject to the constitution and other governing instruments of the parent church, in *Graham* the court held that the local church was not a member of the denominational church but rather was independent from the hierarchical body. *See id.* at 527. The evidence showed that the local church was not even aware of the hierarchical church constitution and did not have notice of any express trust provisions therein. *See id.* at 526. Thus, the district court's finding that there is no trust relationship between the parties regarding church property and not even a hierarchical relationship between the parties necessitated the Eighth Circuit's conclusion

that the property rightfully belonged to the local church. *See id.* at 527.

IV. CONCLUSION

The decision of the Arkansas Supreme Court directly conflicts with the prior decision of this court in *Jones v. Wolf* and is at odds with the decision of every other state court of last resort that has applied the neutral principles doctrine. No other court has reached a similar result when faced with undisputed facts showing that the local church was a connectional branch of the hierarchical church, that the local church admittedly was governed by the parent church constitution, and that the constitution contained an express trust provision in favor of the parent church which was in place prior to the dispute arising. All other courts that have awarded property to a local church have done so either because the applicable church constitution did not contain a trust provision at all or because a trust provision was not in effect at the time the property dispute arose. The Arkansas Supreme Court's unique interpretation of the application of the neutral principles doctrine has effectively allowed the civil courts of Arkansas to become entangled in church polity in violation of the First Amendment to the United States Constitution.

Appendix

Supreme Court of Arkansas

March 29, 2001

Arkansas Presbytery of the Cumberland Presbytery Church and Rev. Michael Qualls, Moderator of the Arkansas Presbytery

Appellants

v. *No. 01-23*

Gary D. Hudson, Palmetto Cumberland Presbyterian Church by and through its Elders, Bobby Gene Jones, Carol Norris, Arvil Hudson, Glen Bond, Sr., Kenneth Norris, Kurt Richter, as Trustees for the Palmetto Cumberland Presbyterian Church

Appellees

RAY THORNTON, Associate Justice

This appeal involves a dispute over the ownership of church property located on Crow Mountain in Pope County following the separation of a local Presbyterian congregation from the hierarchical Cumberland Presbyterian Church. Appellants, Arkansas Presbytery of the Cumberland Presbyterian Church ("Arkansas Cumberland") and the Reverend Michael Qualls, moderator of the Presbytery, appeal an order from the Pope County Chancery Court, granting a petition to quiet title in appellees, Gary Hudson, Palmetto Cumberland Presbyterian Church ("Palmetto"), and the trustees of Palmetto. We affirm the trial court's rulings.

I. Background

Palmetto was formed in 1949 as a member of the National Cumberland Presbyterian Church ("National Church"), a hierarchical or connectional church, that is governed in Arkansas by Arkansas Cumberland. The National Church has a written constitution contained in the Confession of Faith.

The property at issue is three separate tracts of land used by Palmetto for its church, parsonage, and graveyard. Tract A is the property on which the Palmetto church sits. On September 21 1949, M. L. and Cora Dixon conveyed title to Tract A by warranty deed to Cumberland Presbyterian Church-Ewing Presbytery, Arkansas, the former title of Arkansas Cumberland. Palmetto paid one-hundred dollars for the real estate, and no money was received from Arkansas Cumberland to assist in the purchase. During the next year, a church was constructed on the property and was financed by the Palmetto congregation without any assistance from Arkansas Cumberland or the National Church. In 1968, the local Palmetto church requested that title to the church property be conveyed to Palmetto, and on July 2, 1968, a deed was executed by Arkansas Cumberland to the elders of the Palmetto church to hold the property in trust for the local Palmetto church. Neither a reservation of title nor an establishment of a trust in favor of Arkansas Cumberland or the National Church is reflected in the deed.

Tract B is a two-acre church cemetery. On October 10, 1968, Mrs. Cora Dixon conveyed title to Tract B to the local elders as trustees for Palmetto. The Palmetto congregation paid for tract B without the assistance of Arkansas Cumberland

or the National Church. On February 28, 1977, Palmetto purchased Tract C for $18,000 by a warranty deed for the church parsonage, or manse, in the name of the elders as trustees of Palmetto. The church obtained a mortgage for the purchase price at a local bank, and the local congregation contributed to the payment of the mortgage. Palmetto did not receive any money from the National Church or Arkansas Cumberland for the repayment of the loan.

At the time of the conveyances of Tract A and Tract B, the National Church constitution contained the following language from the Cumberland Presbyterian Digest of 1957, including the supplement of the actions of the 1963 General Assembly:

> 11. A. Church Property Should Be Deeded to the Local Presbytery.
>
> B. We further recommend that the following additional provisions be adopted regarding the legal steps to be taken by presbyteries for the protection, transfer, or sale of church property:
>
> (1) Church property should be deeded to the trustees of the local presbytery for the benefit and use of the local church, which local trustees will be in complete charge so long as the church remains organized.

This language is also found in the Cumberland Presbyterian Digest of 1975, the church law in effect at the time of the 1977 conveyance of Tract C.

In 1979, the Supreme Court determined that civil courts faced with issues of ownership of church property could properly apply "neutral

principles of law" in resolving disputes as to the ownership of church property. *Jones v. Wolf,* 443 U.S. 595 (1979). Following the *Jones* case, the National Church adopted in 1984 an amendment to its constitution to replace the constitutional language endorsing the principle of local ownership of church property. According to the testimony of Mr. Gary Hudson, the church clerk, Palmetto had knowledge of this constitutional amendment because a delegate from Palmetto attended the national meeting, and the Palmetto delegate voted "no" to this constitutional amendment.

The rift between Palmetto and Arkansas Cumberland widened in 1992 when Palmetto refused to meet its financial obligations to Arkansas Cumberland, and Palmetto was reprimanded by the statewide church. Mr. Hudson testified that Palmetto contributed monies and submitted annual reports to the Arkansas Cumberland, as required by the church constitution, through 1991. Hudson further testified that Palmetto paid dues to Arkansas Cumberland until 1990 or 1991.

On August 27, 1995, Palmetto submitted a formal, written notice that indicated its intent to withdraw from Arkansas Cumberland. The local, twenty-member congregation unanimously agreed to the withdrawal. Arkansas Cumberland then appointed a commission, pursuant to the church constitution, that recommended the dissolution of Palmetto and a merger with a nearby Mars Hill Cumberland Presbyterian Church for those members who wished to remain affiliated with the National Church. Reverend Wayne Wood, a former moderator of the Arkansas Cumberland, testified, "I have not located a single member [of Palmetto]

to be a party with me in this lawsuit to get the property."

The members of Palmetto refused to vacate the property or to surrender the church records as personal property. Arkansas Cumberland filed an action in replevin and for unlawful detainer, which was transferred to chancery court and consolidated with Palmetto's action to quiet title. The trial court granted Palmetto's petition to quiet title on July 8, 1999. From these orders, appellants bring this appeal. The controversy requires that we articulate neutral principles of law for review of the questions presented.

II. Standard of Review

Our standard of review in chancery cases is *de novo*. This court has been precise in stating what *de novo* review entails:

> Equity cases are tried *de novo* on appeal upon the record made in the chancery court, and the rule that this court disposes of them and resolves the issues on that record is well established; the fact that the chancellor based his decision upon an erroneous conclusion does not preclude this court's reviewing the entire case *de novo*. An appeal in a chancery case opens the whole case for review. All of the issues raised in the court below are before the appellate court for decision and trial *de novo* on appeal in equity cases involves determination of fact questions as well as legal issues. The appellate court reviews both law and fact and, acting as judges of both law and fact as if no decision had been made in the trial court, sifts the evidence to determine what the finding of the chancellor should have been and renders a decree upon the record made in the trial court. The appellate court may always enter such judgment as the chancery court should have entered upon the undisputed facts in the record.

Ferguson v. Green, 266 Ark. 556, 587 S.W.2d 18 (1979) (citations omitted). We do not reverse a finding of fact of the chancery court unless we conclude that the chancery court has clearly

erred. *Bendinger v. Marshalltown Trowell Co.*, 338 Ark. 410, 994 S.W.2d 468 (1999); *Saforo & Assoc., Inc. v. Porocel Corp.*, 337 Ark. 553, 991 S.W.2d 117 (1999). We have said, in addition, that a finding is clearly erroneous when, even though there is evidence to support it, the appellate court is left with the definite and firm conviction that a mistake has been made. *Bendinger v. Marshalltown Trowell Co., supra.*

III. Neutral-principles approach

We first address whether Arkansas should adopt the "neutral principles of law" approach under *Jones v. Wolf,* 443 U.S. 595 Page 338 (1979), and more specifically, whether the trial court failed to consider the 1984 amendment to the National Church constitution, and erred in ruling that the title to the church property remained in the local Palmetto congregation.

Jones, supra, involved a dispute over the ownership of church property following a schism in a local church affiliated with the hierarchical church organization. The "question for decision," said the Court, was "whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church." *Id.*

The Supreme Court then determined that, when determining the resolution of issues outside the realm of "religious doctrine of polity," the "neutral principles of law" approach should prevail. *Id.*

The Court explained the rationale behind this neutral-principles approach:

> [I]t is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law. . . . It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.

Id. The Court then said that "at least in general outline," the "neutral principles of law" approach is consistent with the foregoing principles. *Id.* The neutral-principles approach was approved in *Maryland & Va. Churches v. Sharpsburg Church,* 396 U.S. 367 (1970), where a state court settled a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. That approach entailed "no inquiry into religious doctrine." *Id.* Other jurisdictions have adopted the neutral-principles approach. *See Church of God in Christ, Inc. v. Graham,* 54 F.3d 522 (8th Cir. 1995); *Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465 (Mo. 1985).

We now expressly adopt the neutral-principles approach outlined by the United States Supreme Court in *Jones, supra,* as the appropriate means of resolving church property disputes. In Arkansas, we recognized the neutral-principles approach in *Gipson v. Brown,* 288 Ark. 422, 706 S.W.2d 369 (1986), when we stated: "[S]tate courts can only become involved in church disputes when 'neutral principles' of law can be ap-

plied to resolve the dispute." *Id.* We also acknowledged this approach in *West v. Belin,* 314 Ark. 40, 858 S.W.2d 97 (1993). However, we did not specifically outline the neutral-principles approach in either *Gipson, supra,* or *West, supra.* Because we have recognized this approach in prior case law, and because it has been approved by our United States Supreme Court, we expressly adopt the neutral-principles standard in order to reach the merits of this appeal.

IV. Church property dispute

In our application of the neutral-principles approach, we must refrain from resolving the dispute on the basis of "religious doctrine and practice" and must rely "exclusively on objective, well-established concepts of trust and property law . . . [.]" *Jones, supra.* Any documents, such as the church constitution, pertinent to the dispute, must be scrutinized in purely secular terms. If these documents "incorporate[] religious concepts in the provisions relating to the ownership of property" and if the interpretation of those instruments requires the resolution of a religious matter, then we "must defer to the resolution of the doctrinal issues by the authoritative ecclesiastical body." *Id.*

When we are called upon to construe deeds and other writings, we are concerned primarily with ascertaining the intention of the parties, and such writings will be examined from their four corners for the purpose of ascertaining that intent from the language employed. *Webber v. Webber,* 331 Ark., 395, 962 S.W.2d 345 (1998). In reviewing instruments, our first duty is to give effect to every word, sentence, and provision of a deed

where possible to do so. *Id.* We will not resort to rules of construction when a deed is clear and contains no ambiguities, but only when its language is ambiguous, uncertain, or doubtful. *Bennett v. Henderson,* 281 Ark. 222, 663 S.W.2d 180 (1984); *Barnes v. Barnes,* 275 Ark. 117, 627 S.W.2d 552 (1982).

The first element of the neutral-principles approach is to review the language of the deeds. Here, the language of the deeds indicates that the local trustees of the Palmetto church hold title to the property. As previously outlined, on September 21, 1949, M. L. and Cora Dixon conveyed title to Tract A by warranty deed to Cumberland Presbyterian Church-Ewing Presbytery, the former Arkansas Cumberland, and on July 2, 1968, Arkansas Cumberland deeded it back to the trustees of Palmetto. The deed for Tract A contains the following language:

> THAT WE, Clyde Kinslow, Carleton Bowden, Ray McSpadden, as Trustees for Cumberland Presbyterian Church Ewing-Barrow Presbytery (formerly Ewing Presbytery) GRANTORS, for and in consideration of the sum of one and No/100 dollars ($1.00) in hand paid by Bobby Gene Jones, Carrol Norris, Arvil Hudson, Glen Bond, Sr., Kenneth Norris, Kurt Richter as Trustees for the Palmetto Cumberland Presbyterian Church, GRANTEES, the receipt of which is hereby acknowledged, hereby grant, bargain, sell and convey unto the said GRANTEES, and unto their successors and assigns forever, the following

> land lying in Pope County, Arkansas, . . . [.]
>
> To have and to hold the same unto the said GRANTEES, and unto their successors and assigns forever, with all appurtenances thereunto belonging.
>
> And we hereby covenant with said GRANTEES that we will forever warrant and defend the title to the said lands against all claims whatever.

The trial court heard testimony from Carleton Bowden, one of the Arkansas Cumberland trustees who was named in the 1968 Cumberland conveyance, and ruled that "[t]he testimony of Carlton Bowden was compelling in that he stated that the intent of the parent church in deeding the one acre to Palmetto was to give full title with no encumbrances." Mr. Bowden testified:

> What happened in 1968 was that the Palmetto congregation requested they be given a deed by the Presbytery to the church property, the Presbytery considered the request, granted it, instructed the Trustees of Ewing-Burrow Presbytery to give a deed to the Palmetto Church. . . . In my opinion, the trustees had been deeded to the congregation. . . . My opinion as to why the Cumberland Presbyterian Church is trying to back out of the 1968 Warranty Deed or why they want their property back is two fold. I think the Presbytery desires to retain the property and are reluctant to allow a precedent to be set which cause

other small churches to take similar action[.]

The warranty deed concerning Tract B contains similar language. The deed for Tract B conveys title from Cora Dixon to Bobby Gene Jones, Carrol Norris, Arvil Hudson, Glen Bond, Sr., Kenneth Norris, and Kurt Richter as trustees for Palmetto as grantees, "[t]o have and to hold the same unto the same GRANTEES, and unto their successors and assigns forever, with all appurtenances thereunto belonging." Later, on February 28, 1977, W. M. and Bernetta Kinslow conveyed title for Tract C to the same individuals, who were listed as grantees. The language of the deed for Tract C is identical to the Tract B deed.

In our review of the language of the deeds, we note that nothing in the language of the deeds reflects that the Palmetto property was held in trust for the Arkansas Cumberland or the National Church. The language of the deeds vests title and control over the property to the named Palmetto trustees. Moreover, Arkansas Cumberland and the National Church did not contribute to the acquisition of the property, and the local Palmetto congregation exercised complete control over the property.

With regard to the second and third elements of the neutral-principles approach approved by the Supreme Court, we note that there is not a local church charter in the record before us, and neither party claims that any state statute creates a trust in the property.

We next consider the National Church constitution in effect at the time of the conveyances. The sections of the church constitutions do not contain any language expressly creating a trust in church property in favor of the National Church.

The Cumberland Presbyterian Digest of 1957 states:

> 11. Title to Church Property
>
> ***
>
> As a rule, the local church is an unincorporated association, so that it cannot hold title to property in its own name. Consequently, it is necessary that title to property of an unincorporated church be taken in the name of Trustees. . . . The local church may have the deed to its property made to its Ruling Elders and their successors in office as Trustees for the use and benefit of the local church. Or the local church may, if it prefers, elect Trustees for the purpose of taking title to church property.
>
> ***
>
> Since the opinion of the United States Supreme Court in the case of *Watson vs. Jones,* 13 Wallace 679, decided April 15, 1872, it has been generally held by the Courts of the several states that any property conveyed for the use and benefit of a local church of a given faith is held in trust for the congregation or the denomination adhering to that faith, so that in the event of a split in a local congregation a minority adhering to the original faith may hold the property against the majority.
>
> In case the local congregation dissolves or ceases to exist the property still belongs beneficially in trust to

the people of the faith for which the conveyance was originally made. In such a situation there may be no Trustee in existence to preserve or protect the property. Under these circumstances it has been the impression in our denomination that the title in some way is transferred to the Presbytery in which the property is situated. *As a matter of civil law this is not strictly true. While the duty and responsibility of looking after the property may properly devolve upon the Presbytery, the title does not and cannot automatically vest in the Presbytery. The Presbytery may take the legal steps for the protection, transfer or sale of the property as the best interest of the denomination indicates.*

(Emphasis added.)

The supplement to the 1957 digest, which includes the actions of the 1963 General Assembly, contains the following provisions:

> 11. A. Church Property Should Be Deeded to the Local Presbytery.
>
> B. We further recommend that the following additional provisions be adopted regarding the legal steps to be taken by presbyteries for the protection, transfer, or sale of church property:
>
> (1) Church property should be deeded to the trustees of the local presbytery for the benefit and use of the local church, which local trustees will be in complete charge so long as the church remains organized.

> (2) In case the local church should become disorganized through the death or removal of the officers, the presbytery should appoint some of the remaining local members of the congregation a Board of Trustees for the preservation, protection, transfer or sale of the property.

This language is also found in the 1975 edition of the Cumberland Presbyterian Digest, the governing church law at the time of the February 28, 1977 conveyance of Tract C from the Kinslow family to the Palmetto trustees.

Appellants argue that the church constitution amended in 1984, thereafter imposes a trust in favor of the National Church upon property previously held by the local congregations. That amendment provides:

> 3.32. The Cumberland Presbyterian Church is a connectional church and all lower judicatories of the local church to-wit: synod, presbytery, and the particular churches are parts of that body and therefore all property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Cumberland Presbyterian Church, whether legal title is lodged in a corporation, a trustee, or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, and whether or not the deed to the property so states, is held in trust nevertheless for the use and

benefit of the Cumberland Presbyterian Church.

Appellants' argument is misplaced. Appellants contend that by adoption of the 1984 amendment to the National Church constitution, a trust in favor of the National Church was imposed upon property belonging to the trustees of the Palmetto church. We again note that Tract A was conveyed in 1968 by Arkansas Cumberland to the local Palmetto church without any reservation of title or creation of a trust in favor of Arkansas Cumberland or the National Church. Appellants do not cite any cases that allow a grantor to impose a trust upon property previously conveyed without the retention of a trust.

Although the neutral-principles approach to the resolution of property disputes includes consideration of any church constitutions under *Jones, supra,* it is appropriate to first consider the provision the church constitution in place at the time of the 1968 and 1977 conveyances. We have long held that parties to a conveyance have a right to rely upon the law as it was at that time. *See Sides v. Beene,* 327 Ark. 401, 938 S.W.2d 840 (1997); *Abrego v. United Peoples Fed. Sav. & Loan,* 281 Ark. 308, 664 S.W.2d 858 (1984); *Warren v. Warren,* 273 Ark. 528, 623 S.W.2d 813 (1981).

Under the National Church constitutions at the time of the 1968 and 1977 conveyances, the church property "should be deeded to the trustees of the local presbytery for the benefit and use of the local church, which local trustees will be in complete charge so long as the church remains organized." Both the 1963 and 1975 editions of the National Church constitutions, which govern the conveyances of the 1968 and 1977 conveyances, respectively, support the conclusion that

exclusive title and control over local church property is vested in the Palmetto trustees. Based upon the application of our neutral-principles approach and our *de novo* review, we hold that the trial court did not err in quieting title to the property in the trustees of the Palmetto church.

Affirmed.

Brown, Imber, and Hannah, JJ. dissent.

ANNABELLE CLINTON IMBER, Justice, dissenting.

The majority's opinion in this case fails to give effect to the Constitution of the Cumberland Presbyterian Church, as amended in 1984, which expressly provides that all property held by local churches is held in trust for the Cumberland Presbyterian Church:

3.32. The Cumberland Presbyterian Church is a connectional church and all lower judicatories of the church to wit: synod, presbytery, and the particular churches are parts of that body and therefore all property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Cumberland Presbyterian Church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, and whether or not the deed to the property so states, is held in trust nevertheless for the use and benefit of the Cumberland Presbyterian Church.[1]

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[1] The following sections in the Cumberland Presbyterian Church's Constitution, as amended in 1984, also pertain to property:

3.30 Of Property
This section is declaratory of principles to which the Cumberland Presbyterian Church/Second Cumberland Presbyterian Church and their antecedent church bodies have adhered from the inception of the presbyterian form of church government.
***
3.31 The provisions of church government as set forth in the Constitution, Rules of Discipline, and Rules of Order prescribing the manner in which decisions are made, reviewed,

In *Jones v. Wolf,* 443 U.S. 595 (1979), the United States Supreme Court sanctioned the use of such an express trust provision in a hierarchical or connectional church's constitution to resolve church property disputes, if the trust provision becomes effective before the dispute arises:

> Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. *At any time before the dispute erupts,* the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds

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and corrected within this church are applicable to all matters pertaining to property.

***

3.33. Whenever property of, or held for, a particular church of the Cumberland Presbyterian Church, ceases to be used by the church, as a particular church of the Cumberland Presbyterian Church in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery in which that particular church is located,

3.34. Whenever a particular church is formally dissolved by the presbytery, or has become extinct by reason of dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery in which said particular church is located may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the Cumberland Presbyterian Church.

3.35. A particular church shall not sell or lease its real property used for purposes of worship, nature or ministry, without the written permission of the presbytery in which the particular church is located, transmitted through the session of the particular church.

> or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, *the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.*

Jones v. Wolf, 443 U.S. at 606 (emphasis added.)[2] The chancellor in this case was *bound* to give effect to the Constitution of the Cumberland Presbyterian Church, as amended in 1984, because it was in effect for several years before the dispute between the parties arose.

Such a holding is also supported by decisions from other jurisdictions. In *Bethany Independent Church v. Stewart,* 645 So.2d 715 (La. Ct. App. 1994), a local affiliate of the Cumberland Presbyterian Church sought to disassociate itself from the general church. In doing so, the local congregation formed a corporation called the Bethany Independent Church and transferred all of the local church's assets to the new corporation, including three tracts of real estate. The general church intervened in the dispute and the trial court resolved the issue in favor of the local church. The Louisiana Court of Appeals reversed and relied solely on the 1984 amendments to the

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[2] The church property dispute in *Jones v. Wolf, supra,* involved a local church affiliated with a similar hierarchical or connectional church organization, the Presbyterian Church of the United States.

church constitution regarding ownership of church property; that is, the very same provisions at issue here. The court specifically noted that the local church had subjected itself to the rules, governmental structure, and doctrine of the general church prior to the dispute, which arose in 1992. *Id.* at 720. The court held: "Based on an examination of the documents in purely secular terms, we conclude it was the intention of the parties, *agreed upon before the dispute arose,* to be bound by the provisions of the [church's constitution as amended in 1984], including those provisions relative to property." *Id.* at 722 (emphasis added). Like the situation currently before this court, the deeds to the property in *Bethany Independent Church v. Stewart* were executed in 1872, 1955, and 1960, long before the 1984 amendments to the church constitution. *Id.* However, the court clearly looked to the constitution in effect when the dispute between the parties arose, instead of the provisions in effect at the time the deeds were executed. *Id. See also, Shirley v. Christian Methodist Episcopal Church,* 748 So.2d 672 (Miss. 2000) (looking to the hierarchical church's 1994 Book of Discipline to resolve a dispute regarding property deeded to the trustees of the local church in 1947); *Cumberland Presbytery of the Synod of the Mid-West of the Cumberland Presbyterian Church v. Branstetter,* 824 S.W.2d 417 (Ky. 1992) (the terms of the Constitution of the Cumberland Presbyterian Church, as amended in 1984, governed at the time the property dispute arose in 1987, even though title to the property was held by a local church that had been in existence since 1911); *Fonken v. Community Church of Kamrar,* 339 N.W.2d 810 (Iowa 1983) (looking to church documents in effect at the time the schism within

the local church occurred in 1980 even though the property was originally acquired in 1881); *Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465 (Mo. 1984) (looking to the constitution of the general church as it existed on the date the local church terminated its association with the general church); and *Carnes v. Smith,* 222 S.E.2d 322 (Ga. 1976) (the express trust provisions of the United Methodist Church's Book of Discipline, which provides that the church property is held by local trustees for the benefit of the general church, governed in a dispute where property was deeded in 1852 to the "trustees of the Methodist Episcopal Church [UMC's predecessor] at Mount Pleasant Academy.")

Some jurisdictions have established a rule applicable in situations such as this, whereby a trust provision in a general church's constitution is given effect even though the trust provision was not in place at the time the disputed property was acquired, "so long as a court finds that the trust provisions were declaratory of existing church policy." *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville,* 250 A.D.2d 282, 288 (N.Y. App. Div. 1999) (citing *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in Diocese of Connecticut,* 620 A.2d 1280, 1292-1293 [Conn. 1993]). Here, the trust provision added to the Cumberland Presbyterian Church's Constitution in 1984 was clearly declaratory of existing church policy. The New Cumberland Presbyterian Digest of 1920 stated, in relevant part:

> Resolved, that it is the sense of this Assembly that the rightful ownership of and title to church property belonging to a disorganized congrega-

> tion, or of abandoned church property is and should be in the Presbytery in whose bounds it is located, provided there are no provisions in the deed of conveyance directing what shall become of the property when it ceases to be used for church purposes.

The Cumberland Presbyterian Digests of 1957 and 1975 provided, in relevant part:

> In case the local congregation dissolves or ceases to exist, the property still belongs beneficially in trust to the people of the faith [the Cumberland Presbyterian Church] for which the conveyance was originally made. . . . Under these circumstances, it has been the impression in our denomination that the title in some way is transferred to the Presbytery in which the property is situated.

Therefore, at all times prior to the 1984 amendments, church policy stated that the property of a disorganized or dissolved local congregation came under control of the Presbytery or general church. The 1984 amendment did nothing more than solidify existing church policy. Accordingly, the trust provision added to the church constitution in 1984 should be given full effect in favor of the Cumberland Presbyterian Church.

Furthermore, the language providing for a trust in favor of the general church was added to the constitution in 1984 by a three-fourths vote of all the member churches. Palmetto Cumberland Presbyterian Church (Palmetto) was a member of the general church and the Arkansas Presbytery at that time and did not formally withdraw its membership until 1995, eleven years later. Notwith-

standing the fact that Palmetto voted against the 1984 amendment, it continued to contribute money and submit annual reports to the Arkansas Presbytery until at least 1991. Palmetto also continued to send delegates to meetings of the Arkansas Presbytery after 1984. While Palmetto may not have agreed with the 1984 amendment to the constitution, it continued to operate as a member of the general church for several years after the amendment was adopted. Thus, Palmetto acquiesced in the constitutional amendment and should be bound by it. The reasoning of the Indiana Court of Appeals in *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 276 N.E.2d 916 (1971), where it considered a similar church property dispute, is particularly apt in this case:

> A local church, if it desires to remain independent of the influence of a parent church body, must maintain this independence in the important aspects of its operation—*e.g.*, polity, name, finances. It cannot, as here, enter a binding relationship with a parent church which has provisions of implied trust in its constitution, by-laws, rules, and other documents pertaining to the control of property, yet deny the existence of such relationship. . . . A local church cannot prosper by the benefits afforded by the parent, participate in the functioning of that body, yet successfully disclaim affiliation when the parent acts to the apparent disadvantage of the local, so as to shield from equitable or contractual obligation the valu-

able property acquired by the local church either before or during such affiliation.

The situation presented here, where the local church continued to operate as a member of the general church for several years after the amendment containing the trust provision was adopted, is readily distinguishable from cases in other jurisdictions in which recent amendments to the general church's constitution were deemed inapplicable. In those cases, the local church withdrew from the general church *before* the amendment to the general church's constitution was adopted. *See Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America v. Middlesex Presbyterian Church,* 489 A.2d 1317 (Pa. 1985) (where the general church's constitution was amended to provide for an express trust in favor of the general church only after the local church voted to disaffiliate); *York v. First Presbyterian Church of Anna,* 474 N.E.2d 716 (Ill. App. Ct. 1984) (where the local church withdrew from the general church before adoption of an amendment to the general church's constitution providing for an express trust in favor of the general church); *Foss v. Dykstra,* 342 N.W.2d 220 (S.D. 1983) (where the general church's Book of Order did not contain a trust provision on the date that the local church voted to withdraw from the general church.)

Finally, the deeds granting all three parcels of property to the trustees of the local church name the grantees "as Trustees for the Palmetto Cumberland Presbyterian Church." The Palmetto Cumberland Presbyterian Church, however, no

longer exists.[3] Therefore, it is impossible for the deeds to control because the local church for which the property is supposedly held in trust has been dissolved. Under these circumstances, section 3.34 of the church's constitution provides that the property "shall be held, used, and applied for such uses, purposes, and trusts as the presbytery . . . may direct[.]"

For all these reasons, I must conclude that the church property in dispute is held in trust for the use and benefit of the Cumberland Presbyterian Church pursuant to section 3.32 of the church constitution. The trial court erred when it failed to give effect to the unambiguous language of the Constitution of the Cumberland Presbyterian Church, as amended in 1984.

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[3] In 1995, the Arkansas Presbytery of the Cumberland Presbyterian Church suspended the session of the Palmetto Cumberland Presbyterian Church and appointed a commission to rule the church. In 1997, the Arkansas Presbytery adopted the commission's recommendation that the Palmetto Cumberland Presbyterian Church be dissolved and that its members be attached to another congregation.

In the Chancery Court of Pope County, Arkansas

November 16, 2000

Gary Hudson, et al.
Plaintiffs

v. E-98-394 & E-98-562

Arkansas Presbytery of the Cumberland
Presbyterian Church, et al.
Defendants

v.

John and Jane Does 1-100
Third Party

Filed Circuit & Chancery Clerk/ 2000 Nov 16 PM 1:27 "s/Juanita Barber"

Order

Now on this 16th day of November, 2000, the Court finds:

1. The Defendants brought an action for title, ownership and possession of personal property consisting of membership, financial and historical records of the Palmetto Cumberland Presbyterian Church.

2. The Plaintiffs have always had possession of the personal property and continue to have possession of the personal property.

3. The Plaintiffs should have title, ownership and possession of all church records, personal property of the church and church monies.

4. Defendants should be allowed to copy the church records, at their expense for their historical purposes.

IT IS THEREFORE CONSIDERED ORDERED AND ADJUDICATED that:

1. Title to the above described personal property is quieted and confirmed in the Plaintiffs.

2. That the claim of the Defendants for the ownership and possession of the church records, personal property and monies is dismissed with prejudice; and

3. That the Defendants shall have the right to copy, at their expense, all church records for their historical purposes.

S/RICHARD E. GARDNER, JR.
Chancery Judge

Approved by:
Laura J. McKinnon
Attorney for Plaintiffs
Richard L. Peel
Attorney for Defendants

Arkansas Court of Appeals

September 20, 2000

Arkansas Presbytery of the Cumberland Presbyterian Church, et al.
Appellants

v. No. CA00-14

Gary D Hudson, et al.
Appellees

PER CURIAM

This appeal is brought by the Arkansas Presbytery of the Cumberland Presbyterian Church, a collection of churches governing the Cumberland Presbyterian Churches in Arkansas. In 1998, the Presbytery filed an unlawful detainer and replevin action in Pope County Circuit Court against one of its former member churches, appellee Palmetto Cumberland Presbyterian Church. Palmetto counterclaimed with a petition to quiet title, and the action was transferred to Pope County Chancery Court. After a hearing, the chancellor quieted title to three tracts of land in Palmetto. The Presbytery appeals from that ruling. Because the order from which the Presbytery appeals is not a final order, we must dismiss the appeal.

In 1995, following years of controversy over the Cumberland Presbyterian Church's 1984 Confession of Faith (the church's ruling document), Palmetto Cumberland Presbyterian Church withdrew from the Arkansas Presbytery. In doing so, it claimed ownership of three tracts of real property to which it had held title for a number of

years. It also claimed ownership of personal property consisting of membership, financial, and historical records. On May 11, 1998, the Presbytery filed suit against Palmetto alleging that the Presbytery, not Palmetto, was entitled to possession of the abovementioned real and personal property. Palmetto responded with a counterclaim and asked that title to the real property be quieted in it.

Following transfer to chancery court, a hearing was held on May 7, 1999. The Presbytery argued that, under the terms of the Cumberland Presbyterian Church Constitution, all real property held by Palmetto was held in trust for the use and benefit of the entire Cumberland Presbyterian Church, regardless of what was shown in the deeds. Despite this argument, the chancellor quieted title to the real property in Palmetto. No ruling was made on the Presbytery's replevin claim regarding personal property.

Arkansas Rule of Civil Procedure 54(b) provides that, when more than one claim for relief is presented in an action, an order which adjudicates fewer than all the claims is not a final, appealable order. *See Hamby v. Williams,* 335 Ark. 352, 980 S.W.2d 263 (1998). The trial court may direct entry of a final judgment as to fewer than all the claims in a lawsuit, but only upon an express determination, supported by specific factual findings, that there is no just reason for delay. *See* Ark.R.Civ.P.54(b). In the absence of such a finding, the order is not appealable. *See Stratton v. Arkansas State Hwy. Comm'n,* 323 Ark. 740, 917 S.W.2d 538 (1996). Whether an order is final for purposes of appeal is a jurisdictional issue which we are required to raise, even if the parties do not. *Maroney v. City of Malvern,* 317 Ark. 177,

876 S.W.2d 585 (1994). The fundamental policy of Rule 54(b) is to avoid piecemeal appeals. *See id.*

The record in this case does not indicate that the Presbytery's replevin action was adjudicated or otherwise disposed of. Further, the chancellor's order does not reflect a determination, supported by specific factual findings, that there is no just reason for delay. The order appealed from therefore does not comply with Rule 54(b), and we dismiss the appeal without prejudice to refile at a later time.

In the Chancery Court of Pope County, Arkansas

July 8, 1999

Gary D. Hudson, et al.
Plaintiff

v. No. E-98-394

Arkansas Presbytery of the Cumberland Presbyterian Church, et al.
Defendant

Filed/Circuit & Chancery Clerk/'99 Jul 8 PM 3:53
S/Juanita Barber

Order

Now in this 7 day of July, 1999, the following should be ordered:

1. On July 2, 1968, Plaintiffs acquired legal title to certain real property situated in Pope County, Arkansas, particularly described as follows:

> One acre, being and lying in the Northwest corner of the Northeast Quarter of the Northeast Quarter, in Section thirteen (13), in Township seven (7) North, of Range nineteen (19) West, said acre being 208¾ feet North and South, also 308¾ feet East and West.

2. On October 10, 1968, Plaintiffs acquired legal title to certain real property situated in Pope County, Arkansas, particularly described as follows:

> From the NW corner of the NE ¼ of the NE ¼ of Section 13, Township 7 North, Range 19 West in Pope County, Arkansas, run

South 210 feet for a point of beginning; thence South 420 feet; thence East 210 feet; thence North 420 feet; thence West 210 feet to the point of beginning, and constituting 2 acres, more or less.

3. On February 28, 1977, Plaintiff's obtained legal title to certain real property situated in Pope County, Arkansas, particularly described as follows:

Part of the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section 13, Township 7 North, Range 19 West, more particularly described as beginning at a point 208.75 feet East of the NW corner of the said NE ¼ NE ¼, run thence South 208.75 feet; thence East 1.25 feet; thence South 99.25 feet; thence East 104 feet; thence North 308 feet; thence West 105.25 feet to the point of beginning.

4. That the record title of the property described in paragraphs 1-3 continues to reside in the Plaintiffs.

5. That the Plaintiffs did furnish all of the money involved in either purchasing the property involved in paragraphs 1-3, or in improving it.

6. That the Defendants contributed nothing in the way of money towards any of the property mentioned herein or its improvement.

7. The local church (the Plaintiffs) have exercised complete control over this property since it was acquired and have used it as they saw fit without instruction or direction from the parent church.

8. The deeds to this property were all acquired prior to the constitutional change which first clearly sets out the intent of the parent church to lay claim to all property presently held or to be acquired in the future.

9. The testimony of Carlton Bowden was compelling in that he stated that the intent of the parent church in deeding the one acre to Palmetto was to give them full title with no encumbrances.

10. That the Plaintiffs title to the certain real properties described in paragraphs 1-3 should be forever quieted.

IT IS, THEREFORE, BY THE COURT, CONSIDERED, ORDERED AND ADJUDGED that the Plaintiff's Petition to Quiet Title is hereby granted.

IT IS SO ORDERED.

Approved as to form:
Richard L. Peel, Attorney for Defendants
Laura J. McKinnon, Attorney for Plaintiffs

RICHARD E. GARDNER JR.
Chancery Judge
Date: 7-7-99

MOTION FILED
SEP 2 1 2001

No. 01-8

In The

Supreme Court of the United States

ARKANSAS PRESBYTERY OF THE
CUMBERLAND PRESBYTERIAN CHURCH,

Petitioner,

v.

GARY D. HUDSON AND
PALMETTO CUMBERLAND PRESBYTERIAN CHURCH,

Respondents.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Arkansas**

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE THE REVEREND CATHERINE URICH, STATED CLERK OF THE PRESBYTERY OF ARKANSAS; THE REVEREND JOSEPH SHEELER, STATED CLERK OF THE PRESBYTERY OF THE PINES; THE REVEREND CLIFTON KIRKPATRICK, STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.) IN SUPPORT OF THE PETITIONER

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OR CALL COLLECT (402) 342-2831

MOTION FOR LEAVE TO FILE *AMICUS CURIAE BRIEF*

Pursuant to Rule 37.2(b) of the Rules of this Court, the undersigned Stated Clerks of governing bodies of the Presbyterian Church (U.S.A.) move for leave to file a brief *amicus curiae* in support of the Petitioner in the above captioned case. Petitioner's counsel has consented to the filing of this brief but the Respondent's counsel has not.

The petition for *certiorari* demonstrates that the Arkansas Supreme Court has misapplied this Court's clear and unambiguous instructions, most recently affirmed in *Jones v. Wolf*, 443 U.S. 595 (1979), causing the First Amendment Protections this Court has so zealously defended and interpreted to be denied religious citizens in the state of Arkansas. The accompanying *amicus curiae* brief demonstrates great harm to religious self governance caused by this misinterpretation of this Court's instruction.

For these reasons, as well as those set forth in the attached brief *amicus curiae*, movants respectfully request the Court to grant their motion for leave to file the accompanying brief supporting the petition for writ of *certiorari*.

September 20, 2001

Respectfully submitted,

ERIC GRANINGER
Counsel for *Amici*

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Louisville, KY 40202

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Reverend Catherine Urich, Stated Clerk of the Presbytery of Arkansas The Reverend Joseph Sheeler, Stated Clerk of the Presbytery of The Pines The Reverend Clifton Kirkpatrick, Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.)

Amici, representing both Presbyteries of the Presbyterian Church (U.S.A.) having churches within the state of Arkansas with 133 congregations within the state of Arkansas related to each other and to the national religious practice in a hierarchical connection. The Cumberland Presbyterian Church shares a common history with The Presbyterian Church (U.S.A.).

The predecessor denominations to the Presbyterian Church (U.S.A.) were the litigants in both *Watson v. Jones*, 80 U.S. 679 (1871), and in *Jones v. Wolf*, 433 U.S. 595 (1979). In *Watson*, Court recognized that under the polity of the Presbyterian Church all property is held in trust. In *Jones* this Court invited churches, like the Presbyterian Church (U.S.A.), to make such trusts explicit in their church *constitutions*. The predecessors of the Presbyterian Church (U.S.A.), like the Petitioners in this case, accepted that invitation and did make their trust clauses explicit in the church *constitutions*.

One hundred eighteen out of one hundred twenty-nine of our congregations in Arkansas were chartered prior to the adoption of that explicit language in 1980.

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[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

The Arkansas Supreme Court has misinterpreted this Courts decision in *Jones* so as to dramatically limit the effect of the rights and privileges of the Petitioner and these *amici* to determine how the property of their congregations shall be held. That would likely have catastrophic consequences for the mission and ministry of the Petitioners and these *amici*.

This case provides this Court the opportunity to correct the erroneous interpretation the Arkansas Supreme Court has made of this Court's clear and unambiguous instructions in *Watson* and *Jones*.

ARGUMENT

I. The Arkansas Supreme Court has misapplied this Court's clear guidance in *Jones v. Wolf* thereby depriving churches in Arkansas the protection this Court has provided churches in other jurisdictions.

In 1979, in the Watershed decision of *Jones v. Wolf*, 433 U.S. 595 (1979), this Court brought great clarity to the legal doctrine of "neutral principles,"[2] applying that doctrine to church property disputes.[3] In *Jones* this Court advised that:

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[2] First Announced in *1970 in Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367.

[3] In *Watson v. Jones*, 80 U.S. 679 (1871) this Court first recognized that property was held in trust " . . . for the use of the persons who by the constitution, usages, and the laws of the Presbyterian body are entitled to that use," at 721.

> under the neutral principles approach, the outcome of church property dispute is not foreordained. At any time **before** the dispute erupts, the parties can ensure if they so desire that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or. . . . Alternatively, **the constitution of the general church can be made to recite an express trust in favor of the denominational church.**

A. *Jones* provides that the Church Constitution in effect at the time the dispute arises is the standard that applies.

In the present case, the Arkansas Supreme Court explicitly adopted the standard this Court laid out in *Jones* for such disputes within the state of Arkansas.[4] However that Court misapplied the *Jones'* standard in that it applied that standard to the time of conveyances[5] rather than to the time the dispute arose. This contradicts this Court's explicit standard as set forth in *Jones*.[6] As the Petitioner's brief accurately notes,[7] the Arkansas Supreme Court is the only State Court of last resort to so misapply this Court's clear instruction. That leaves

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[4] *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 40 S.W. 3d 301 (Ark. 2001) at 306 of their opinion: "We now explicitly adopt the neutral principles approach outlined by the United States Supreme Court in *Jones, supra*, as the appropriate means of resolving church property disputes.

[5] 40 S.W. 3d at 309.

[6] *Jones* at 605.

[7] Petitioner's Brief page 11.

Churches choosing to conduct ministry within the State of Arkansas with an extremely difficult burden and makes First Amendment protection dependant upon which jurisdiction one chooses to practice one's religion.

Like the petitioner, the two predecessor denominations of the Presbyterian Church (U.S.A.) each took this Court at its word in *Jones* and amended their respective Church Constitutions following this Court's invitation[8] to "recite an express trust in favor of the denominational church."[9] A very large number of the Presbyterian Church (U.S.A.)'s congregations were chartered, and real estate purchased, prior to 1980.[10] The ability of these

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[8] The United Presbyterian Church in the United States of America amended its constitution in 1980 (*Minutes*, p. 99) and the Presbyterian Church in the United States amended its constitution in 1981. (*Minutes*, p. 90ff., 224ff.). The clause in the Presbyterian Church (U.S.A.)'s Constitution (*Book of Order*) is found at G-8.0201 and reads:

> All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

[9] In *Jones* this Court merely advised the safe course for preserving the property interest recognized in *Watson* (see footnote 3).

[10] In Arkansas alone, 118 out of 129 were chartered prior to 1980.

amici to do mission in Arkansas is seriously disrupted by the decision of the Supreme Court of Arkansas.

B. In Church Property Disputes involving hierarchical Churches another factor often considered by Courts is whether the local church has continued to participate in the denomination subsequent to the adoption of trust language by the parent Church.

Many Courts attempting to resolve property disputes under neutral principals in hierarchical churches have also looked to whether a congregation has continued to participate in the denomination after language explicitly creating a trust has been added to the church's constitution.[11] Some courts have even suggested that if a local church wishes to remain independent of the influence of a parent church body, it must maintain this independence in the important aspects of its operation – e.g., polity, name, finances.[12]

The dissent in the Arkansas Supreme Court got it exactly correct. The dissent accurately read *Jones* to "give effect to the Constitution of the Cumberland Presbyterian

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[11] For example, *see United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 150 Ind. App. 574, 1971; *Carnes v. Smith*, 236 Ga. 30, 1976; *Bishop and Diocese of Colorado v. Mote*, 716 P. 2d 85, 1986; *Kendysh v. Holy Spirit Byelorussian Autocehphalic Orthodox Church*, 683 F. Supp. 1501, 1987; *Church of God in Christ v. Board of Trustees of New Jerusalem Church of God in Christ*, 26 Kan. App. 2d 569, 1999.

[12] *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 589 N.E. 2d 915, 925, 1976; *Carnes v. Smith*, 222 S.E. 2d 322, 328, 1976.

Church . . . because it was in effect for several years before the dispute between the parties arose."[13] The dissent would have honored the trust explicitly codified by the 1984 amendment to the Cumberland Presbyterian Church's Constitution. These *amici* believe the majority should be directed to do so as well.

The only circumstances where these *amici* are aware that courts have failed to enforce trust language in hierarchical church constitutions are cases where the local congregation sought to leave the parent Church prior to the trust language being adopted or in effect.[14] Those facts do not exist in the current conflict. The Cumberland Presbyterian Church amended its Constitution in 1984; this dispute arose in 1992.[15]

CONCLUSION

For all the foregoing reasons and those asserted by the Petitioner, Arkansas Presbytery, these *amici* urge this Court to accept the *writ of certiorari* and

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[13] Dissenting opinion at, 40 S.W. 3d at 311.

[14] For example, *see Presbytery of Beaver Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church*, 489 A.2d 1317 (1985). In that case the Middlesex church advised the Presbytery of its intention to leave the United Presbyterian Church (USA) prior to the effective date of the trust language quoted in footnote 8.

[15] Arkansas Supreme Court Opinion, 40 S.W. 3d at 312.

Vacate the Judgment of the Arkansas Supreme Court, leaving the Arkansas Presbytery in control of the real estate as required by this Court's analysis in *Jones*.

Or in the alternative

Reverse and Remand for reconsideration applying the clear instruction this Court provided in *Jones* and which the Dissent so clearly understood.

Respectfully submitted,

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Dated: September 20th, 2001